

**Amendment and Response**

Applicant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed June 21, 2007. Claims 31-40 were rejected. With this Response, claims 31-40 have been amended. Claims 31-40 remain pending in the application and are presented for reconsideration and allowance.

**Double Patenting**

The Examiner provisionally rejected claims 31, 32, 33, 34, 35, and 36-40 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Applicant respectfully requests that if the below rejections are removed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P § 804 and claims 31-40 be allowed.

**Claim Rejections under 35 U.S.C. § 102 and § 103**

The Examiner rejected claims 31-33, 35-38, and 40 under 35 U.S.C. 102(e) as being anticipated by the Chen et al. U.S. Patent No. 6,741,969.

The Examiner rejected claims 34 and 39 under 35 U.S.C. 103(a) as being unpatentable over the Chen et al. U.S. Patent No. 6,741,969.

As indicated in the above Examiner Interview Summary, Examiner Doren agreed that the above amendments would overcome the part of the rejections related to the Examiner classifying “attempting to modify” and the office action listed limitations that further limit “attempting to modify” as being outside the scope of positively recited limitations.

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For example, the following limitations of amended independent claim 31 are now clearly positively recited:

modifying, in response to the communication; at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource;

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is derived from at least one human factor resource and is not a static ability; and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period

Amended independent claims 32, 33, and 35 have similar positively recited limitations as amended independent claim 31.

In addition, the above amendments include further clarifications to independent claim 34, such that all of the following are positively recited limitations:

indicating when the capacity of a composite resource exceeds the demand for the composite resource; and

modifying, in response to the indicating of the capacity of a composite resource exceeding the demand for the composite resource, at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, the modifying

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including increasing the demand for the composite resource and/or decreasing the capacity of the composite resource.

Applicant also submits the following further distinctions between the invention as recited in independent claims 31-35 and the disclosure of the Chen et al. patent.

The Chen et al. patent discloses a restaurant gift certificate auction. Users submit offers in the form of a bid to obtain selected restaurant gift certificates. Users bid against each other, subject to restaurant-determined limitations.

The Chen et al. patent Abstract discloses a system and method for reducing excess capacity for restaurants and other industries during off-peak hours. Customers or potential customers may bid on gift certificates redeemable at restaurants during a predetermined time. Users may register with the system and provide identification and demographic information which may be used by restaurants for targeted marketing strategies, promotions, and special offers. The system may include a registration module, an auction module, a restaurant guide module, a restaurant manager module, rewards and referral center module, restaurant reservation module, and advertisement displays.

The Chen et al. patent, at column 2, lines 15-27, discloses that typically, an auction display will include the name of the restaurant, a description of the certificate being auctioned (for example, promotional material regarding the restaurant or a specific feature of the restaurant), the time period for which the certificate is valid (e.g., Monday only, Monday-Thursday, Monday-Thursday 4-7 p.m., etc.), the value of the certificate (for example, \$50.00), any minimum bid, the status of the auction, and other desired information. For example, the status may include the current bid and the time left to bid. Multiple certificates may be auctioned with the same or similar parameters. Also, a user may obtain additional information relating to an auction of interest. Column 2, lines 15-27.

Thus, in the Chen et al. patent, when a user successfully wins an auction, they obtain a gift certificate of a specified face value in exchange for the dollar amount of their bid. By contrast, as defined by the limitations of independent claims 31-35, the successful user actually reserves a composite resource, described by at least a service location and at least one of a

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service date and a service time. The process of making that reservation establishes: 1) a specific location; 2) on a specific date; and, 3) at a specific time. The Chen et al. patent does not result in the same composite resource reservation and also does not result in the above three firmly established transaction parameters. In fact, for the Chen et al. patent described method (i.e., auction bidding) of excess capacity management, firmly establishing all three, rather than just two of the three would significantly decrease the winning auction bids, thereby significantly reducing the effectiveness of the solution.

Applicant also respectfully submits that contrary to the Examiner statement, “a certificate for a table at a restaurant for food” is fundamentally different from “a reservation for a table at a restaurant for food.” Moreover, the Examiner statement overstates the Chen et al. patent disclosure, because the Chen et al. patent does not disclose “a certificate for a table at a restaurant for food” but only “a certificate for a restaurant for food.” For it to be a certificate “for a table” would expressly require a reservation, which the Chen et al. patent does not teach.

Thus, a certificate redeemable for the reservation of a composite resources is not a composite resource; it is only a payment method. Accordingly, “composite resources” as recited in independent claims 31-35 is in no way equivalent to “gift certificates” that are disclosed in the Chen et al. patent. Therefore, for example, the Chen invention does not teach the following limitations of amended independent claim 31:

accepting, via computer, transaction parameter values for **composite resources**, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time;

communicating at least a portion of the transaction parameter values for **at least one composite resource** to at least one potential user of the at least one composite resource; and

modifying, in response to the communication, at least one of a demand for **the at least one composite resource** and a capacity of **the at least one composite resource**, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource.

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Furthermore, the Chen et al patent disclosed method accepts transaction parameter values for **gift certificates** and communicates at least a portion of the transaction parameter values for at least one **gift certificate** to at least one potential user of the **gift certificate**. By contrast, as defined by the limitations of independent claims 31-35, the at least one **service** date and **service** time is a date and/or time measure indicating a present or future first date and/or time **when the service is available**. At best any modification of the Chen et al. method would result in the at least one **redemption** date and **redemption** time is a date and/or time measure indicating a present or future first date and/or time **when redemption may take place**, and there is clearly a distinction between service availability and redemption permissibility.

In view of the above, each amended independent claim 31-35 includes limitations which are not taught or suggested by the Chen et al. patent, alone or in combination with the other cited references. In addition, dependent claim 36 further defines patentably distinct amended independent claim 31; dependent claim 37 further defines patentably distinct amended independent claim 32; dependent claim 38 further defines patentably distinct amended independent claim 33; dependent claim 39 further defines patentably distinct amended independent claim 34; and dependent claim 40 further defines patentably distinct amended independent claim 35. Therefore, these dependent claims are also believed to be allowable.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the above 35 U.S.C. § 102(e) and § 103(a) rejections to the claims, and requests allowance of claims 31-40.

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**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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PGB:cmj:cms

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